IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10277 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R. TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KHAMBHAT NAGAR PALIKA

Versus

GUJARAT GENERAL KAMDAR UNION

Appearance:

MR SK JHAVERI for Petitioner

DELETED for Respondent No. 1

MR TR MISHRA for Respondent No. 2

CORAM : MR.JUSTICE RAVI R. TRIPATHI

Date of decision: /12/2000

C.A.V. JUDGEMENT

The present petition is filed by Khambhat Nagar Palika ("the Nagarpalika" for brevity) challenging the award passed by the Presiding Officer, Labour Court,

Anand in Reference (Demand) LCA No.38/ 92 dated 28.7.1998. By the said award one Smt. Rekhaben Narendrabhai Acharya has been ordered to be placed at par with Class IV employees along with pay scale and other benefit applicable to Class IV employees, to be paid within 30 days of the publication of the award. The contention of the Nagar Palika is that the said award is arbitrary, illegal, violative of the Constitutional guarantees enshrined under the Constitution of India and is also against the evidence on record and in addition thereto it is contrary to the settlement arrived at between the Nagar Palika and two recognised unions in respect of revision of pay. A copy of the impugned award is annexed to the petition at Annexure 'A'.

2. The facts giving rise to the present petition are as under:

On discontinuance of the Urban Community Development Scheme, three individuals who were claimants before Labour Court were rendered surplus. Respondent no.2 was one of them and as such their part time employment came to be terminated, but the petitioner Nagar Palika tried to absorb them by giving them work in Balmandirs on lump sum basis of Rs.200/-, per month. Thus, they were continued in service in Balmandir Section of Nagar Palika. There are only two categories in that Section, namely, teachers and tedagars. Respondent no.2 was absorbed as tedagar with effect from 11.1.1986 on a lump sum remuneration of Rs.200/-, per month, the amount which was paid by them as a social worker. Respondent union which is a General Kamdar Union consists of only a few members who are employed under the petitioner Nagar Palika and the same is not a recognised union of the employees of the petitioner Nagar Palika. Respondent no.1 union made a demand to give salary of Class IV Peons or Watchman to the three claimants including the present respondent no.2 also. Said demand came to be referred to the Labour Court being Reference (Demand) LCA No.38/92. As set out in the petition, during the pendency of the reference, two recognised unions made a demand for revision of pay scales. These two recognised unions were, "Khambhat Nagarpalika Karmachari Mandal" and "Khambhat Nagarpalika Octroi Karmachari Union". Said demand came to be referred to the Industrial Tribunal being Reference No.IT 395 of 1990 and the same came to be decided on 7.5.1992, whereunder the pay of each category came to be revised. It is also set out in the petition that under the said award, the pay of the personnel of Balmandir Section consisting of 30 teachers and 30 tedagars came to be revised and a lump sum payment to

tedagar was revised from Rs.300/-, to Rs.500/-, per month.

3. On the other hand, the demand made by respondent no.1 union which came to be referred as LCA NO.38/ 92 came to be decided by award dated 28.7.1998, which came to be published on 27.8.1998, whereby respondent no.2 was directed to be placed as a Class IV employee and be paid salary as admissible to Class IV employees. The difference of salary from the date of her joining in the petitioner Nagar Palika with all other benefits and the said award was ordered to be complied with within 30 days from the date of its publication with cost of Rs.1500/-. It may also be noted that, the demand was raised for three employees, namely, Smt.Subhadraben C. Shah, Smt. Rekha N. Acharya and Smt.Kantaben M. Patel. The other two employees, namely, Smt. Subhadraben and Smt. Kantaben entered into a settlement with the Nagar Palika and agreed to terms and conditions of pay scales as settled between the two recognised unions and the petitioner Nagar Palika.

4. The petitioner Nagar Palika has challenged the present award on the ground that (i) the Labour Court has no jurisdiction to entertain the reference filed by the respondent union inasmuch as the State Govt. has established a Primary Education Tribunal for the settlement of disputes relating to teaching and non teaching staff of primary schools and therefore, the reference before the Labour Court was not maintainable as the teachers are not workmen within the meaning of Industrial Disputes Act, 1947. It was also contended that as in Balmandir Section there is no post of Peon or Watchman. The claim was unwarranted. It was also contended that the financial position of the petitioner Nagar Palika is very grim due to scarcity of funds and the Nagar Palika is not able to manage its day to day affairs and that the petitioner Nagar Palika is unable to bear any further financial load. It was also submitted that the State Govt. has also restrained the Nagar Palika by a Notification dated 16.10.1984 that before taking any kind of financial commitment, consent of the State Govt. would be essential and that in view of the fact that the State Govt was not a party to the Reference, the same was required to be rejected. It was also contended that the respondent union is not a representative union and therefore, could not have sought the reference on behalf of its members who were few in number and the claims of such members did not survive in view of the settlement regarding pay scales in force. It was also the case of the petitioner Nagar Palika that the

claim of the respondent Union about parity of pay scales with the Peons and Watchmen which is a class distinct in itself and is in no manner equivalent with the class of tedagars, the settlement was between recognised unions and Nagar Palika was binding upon respondent no.2 also and the present reference was required to be decided accordingly.

5. A perusal of the award reveals that the Labour Court considered the demand of respondent union in light of the fact that though Reference IT No.369/ 83 was settled on 3.7.1985 and as per that settlement tedagars were to be paid a lump sum amount of Rs.330/-. Said benefit was not given to respondent no.2. The Labour Court also considered clause 5 of that settlement whereby tedagar bai was to work for full time and after one year from the date of entry in service, they were to be made permanent. The Labour Court considered that the petitioner petitioner Nagar Palika continued to exploit respondent no.2 even after 12 years of continuous service when she is paid only Rs.200/-, per month. The Labour Court recorded its finding to the effect that respondent no.2 since the date of entry in service was discharging her duties and the action of the petitioner Nagar Palika of paying a sum of Rs.200/-, is illegal and unreasonable and that respondent no.2 was discharging her duties as full time and not as part time worker.

6. The Labour Court committed an error in coming to the conclusion that Nagar Palika in its Balmandir Section on its establishment after teacher will necessarily have other employees like tedagars, thereafter peon and watchman. This conclusion of Labour Court is not based on any material on record of the case. The Labour Court has committed this grave error in drawing this conclusion in absence of any material on the record. The Labour Court ignoring the case of the petitioner Nagar Palika that in Balmandir Section there were only two categories of posts, namely, teachers and tedagars and there were no posts of Peons and Watchmen. The Labour Court has also not given any reasons as to why the Labour Court did not deem it fit to award benefits to respondent no.2 under the settlement arrived at in other reference. In view of this the award of the Labour Court is required to be quashed and set aside by this Court.

7. Respondent no.2 has filed an affidavit in reply to this petition wherein she has emphatically contended that the present petition is required to be rejected on the ground of delay inasmuch as the Labour Court had passed the award on 28.7.1998 which was published on

27.8.1998 and the petition was moved only on 24.9.1999. It is also mentioned that the petition was moved only after respondent no.2 filed contempt proceedings before this Court in which the Court was pleased to issue notice. It was only thereafter that the petitioner Nagar Palika filed the present petition. However, it may be noted that this Court besides issuing notice on 24.9.1999, which was made returnable on 22.10.1999 did grant ad interim relief in terms of para 6(B). Respondent no.2 has also tried to put forward the plea that the settlement arrived at in Reference No.369 of 1983 which was dated 23.9.1995 will not be applicable to respondent no.2 in light of the fact that respondent no.2 was working as a social worker from 4.11.1978 and she continued to work as social worker upto 10.1.1986 and it was only from 11.8.1986 that respondent no.2 was taken in Balmandir Section and therefore, settlement dated 23.9.1995 will not be applicable to her. Said contention is misconceived inasmuch as when she is taken in Balmandir Section she could have at the most claimed for salary/ wages as per the prevalent settlement, which was governing the terms and conditions of service of all other similarly situated tedagar bai's. To say that no settlement either in previous reference or subsequent reference is binding to the case of respondent no.2 is totally misconceived. If on closure of Urban Community Development Scheme, if part time employment of respondent no.2 came to be terminated and if as an indulgence the petitioner Nagar Palika employed respondent no.2 as a tedagar bai on the same lump sum pay of Rs.200/-, per month, at the most she could have demanded parity with other existing tedagars bai's and the Labour Court ought to have considered her demand only to that extent and should have granted parity with other tedagar bai's.

8. Respondent no.2 made a reference in her affidavit in reply that the petitioner Nagar Palika has employed other employees of Urban Community Development Scheme on its regular strength but then no details are given of any such employment and therefore, the same is of no consequence.

9. In the result, in view of the aforesaid discussion the judgement and award of the Labour Court passed in Reference (Demand) LCA No.38/ 92 [Old NO.3/90] is hereby quashed and set aside. It is directed that respondent no.2 be governed by the award in IT Reference No.395 of 1990. It is further made clear that if respondent no.2 is paid only at the rate of Rs.200/-, per month from the date of her absorption as tedagar bai, i.e. from 11.1.1986 and if that amount is less than the

amount paid to other tedagar bai's at the relevant time the petitioner Nagar Palika is directed to make payment of difference of pay within three months from the date of receipt of the writ of this Court.

10. The Special Civil Application stands allowed to the aforeaid extent only. Rule is made absolute with no order as to costs.

(Ravi R. Tripathi, J.)

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